IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 348 of 1999
with
COMPANY PETITION NO.47 OF 1992
with
COMPANY PETITON NO.291 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BOARD OPINION

Versus

GUJARAT HI-TECH INDUSTRIES LTD

Appearance:

1. COMPANY PETITION No. 348 of 1999
BOARD OPINION for Petitioner No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 13/02/2002

ORAL JUDGEMENT

Company Petition No.348 of 1999 arises from the

opinion dated 9.11.1999 of the Board for Industrial and Financial Reconstruction in Case No.144 of 1999 recommending under Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, winding up of Gujarat Hi-Tech Industries Limited (hereinafter referred to as "the respondent-company"). Company Petition No.47 of 1992 was filed by one of the creditors who had supplied goods to the respondent-company and that party's claim of Rs.88,099.16 as on 6th February 1991 was not satisfied by the respondent-company in spite of service of statutory notice in the year 1991. Company Petition No.291 of 1997 was filed by another creditor who had supplied the goods to the respondent-company and the claim of Rs.9 lakhs was not satisfied by the respondent-company in spite of service of statutory notice in the year 1997. However, Company Petitions Nos.291 of 1997 and 47 of 1992 remained in dormant condition on account of pendency of the proceedings before BIFR.

2 At the hearing before BIFR on 3.1.1995 the respondent-company was declared to be a sick industrial company. The ICICI was appointed as the operating agency. Though repeated opportunities were given to the respondent-company, it had failed to submit a scheme and therefore the BIFR directed the operating agency to explore the chances of change in the management of the respondent-company. The operating agency issued an advertisement and though some parties showed preliminary interest, only Gujarat Ambuja Cements (hereinafter referred to as "Ambuja Cements") showed sustained interest. However, even the Ambuja Cements was unable to submit a comprehensive scheme because, the respondent-company's accounts after 1995 were not available and no other information was forthcoming. Hence, without any such information or material, the operating agency prepared the draft rehabilitation scheme but, in view of the strong objection from the Government of Gujarat and State Bank of India the draft scheme was not sanctioned. The Bench formed a prima facie opinion that the respondent-company deserves to be wound up and therefore, a show-cause notice was published calling for suggestions and objections from the interested parties. After considering all the responses including those from Canara Bank, Bank of Baroda, Indian Oil Corporation, Dena Bank, Gujarat Electricity Board and certain workmen, the Board came to the conclusion that the banks and institutions had sunk crores of rupees in the respondent-company and there were no chances of revival of the company. Hence, the Board sent its opinion dated 9.11.1999 through the letter dated 16.12.1999 of the

Registrar of the BIFR forwarding the opinion to this Court that it is just and equitable that M/s Gujarat Hi-Tech Industries Limited should be wound up.

3 By order dated 7.2.2001 this Court had appointed Official Liquidator attached to this Court as the provisional liquidator and directed him to publish advertisement in the newspapers and Government Gazette. The Official Liquidator filed his report dated 3.11.2001 stating that the order for publication of the advertisement has been complied with except that notice is not published in the Official Gazette. The notices are published in two newspapers being "Fulchab" and "Indian Express". The Official Liquidator further states that he has received a letter dated 15.1.2001 from the Managing Director of the respondent-company stating that the Board of Directors of the respondent-company concurs with the opinion of the BIFR for winding up of the respondent-company.In the facts and circumstances of the case, publication of notice in the Official Gazette is dispensed with.

4 In response to the public notices issued through the newspapers there is no opposition to the opinion of the BIFR for winding up of the respondent-company but one Dhirajlal Maganlal Purohit has filed affidavit dated 22nd March 2001 claiming his dues to the tune of Rs.26,23,548 at the end of the year 1996-97 on the basis that the said party used to sell gypsum to the respondent-company from 1994 onwards and the party was also entrusted the work of transporting the raw-material to the respondent-company from different places. It appears that there are a large number of secured creditors like ICICI, Bank of India, State Bank of India, Bank of Baroda, Dena Bank and UTI. The ICICI, which was also appointed as the operating agency, is represented by Singhi & Co. who state that the respondent-company deserves to be wound up.

5 In view of the above, in absence of any opposition from any quarters and since the view of the respondent-company is also that the respondent-company deserves to be wound up, the Court sees no reason not to accept the opinion of the BIFR, forwarded to this Court under Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985.

6 Accordingly, the respondent-company, Gujarat Hi-Tech Industries Limited, is ordered to be wound up. The Official Liquidator attached to this Court is appointed as the Official Liquidator of the respondent-company. The Official Liquidator shall take

over the assets of the company and get the inventory and valuation of the assets of the company made as expeditiously as possible and in any case within one month from today. The Official Liquidator shall comply with all other formalities in accordance with the Companies Act, 1956 and exercise powers and discharge duties in accordance with the provisions thereof.

7 Company Petition No.348 of 1998 is accordingly disposed of by accepting the opinion of the BIFR. Company Petitions Nos.47 of 1992 and 291 of 1997 are also allowed without expressing any opinion on the quantum of dues claimed by the creditors but no separate orders are required to be passed in view of the aforesaid orders passed in Company Petition No.348 of 1999.

(M.S.Shah, J.)
(mohd)